IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4884 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HETALIBEN WD/O SAVABHAI VIRSING PATELIA
Versus
PRATAPBHAI GANPATBHAI VANZARA

Appearance:
1. First Appeal No. 4884 of 2001
MR SK BUKHARI for Petitioner No. 1-6
DS AFF.NOT FILED (N) for Respondent No. 1-3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1 This appeal is directed against the order dated 31/8/2001 under Section 140 of the Motor Vehicles Act, dismissing the application, passed by the Motor Accident Claims Tribunal (Aux.) Panch Mahals at Godhra in Motor Accident Claim Petition No.2057 of 2000.

2 It is suggested that the appellants-original claimants filed application before the Motor Accident Claim Tribunal, Panch Mahals at Godhra interalia praying for compensation of Rs.8,90,000/- along with interest and cost in respect of the death of Savabhai Virsing Patalia in vehicular accident which took place on 28.07.2000 at Sangtala Chowkdi by Tempo bearing No.GJ-17-T 4918. That in the said accident Tempo bearing No.GJ-17-T 4918 is involved having been driven by respondent No.1 in rash and negligent manner. In the said claim petition it is further stated that the said vehicle was insured with respondent No.3 - National Insurance Company Ltd. on the date of the accident. In the claim petition the dependents claimants submitted an application vide exhibit 4 under section 140 of the Motor Vehicles Act praying to award Rs.50,000/- to them.

3 The Claims Tribunal while dismissing the application under section 140 of the Act has observed that the name of opponent no.2 is shown in the policy as owner of the vehicle but copy of the certificate of registration mark 12/4 shows that Tempo has been transferred to Laxmanbhai Dasubhai Vanjhara and his name has been entered in the record; that the entry regarding above transfer was made on 21.2.2000 and the accident took place on 28.7.2000. According to the Tribunal Opponent No.2 was not the owner of the vehicle at the relevant time and the transferee Laxmanbhai Dasubhai was not shown as owner of the vehicle. It is further observed by the Claims Tribunal that the transferee Laxmanbhai Dasubhai was not impleaded as party in the claim petition. On these two grounds the Claims Tribunal dismissed the application under section 140 of the Motor Vehicles Act.

4 Mr.Sunil Mehta, learned Advocate for the appellants has placed reliance on the decision in case of Rikhi Ram and Another Vs. Smt.Sukhrania and others reported in 2003(1) SCALE 732 and contended that as far as the third party/injured is concerned no matter whether the fact of transfer of vehicle has been intimated to the Insurance Company or not and whether transferee is impleaded as party in the proceedings the liability of

the Insurance Company under the Act to third party/victim subsists. In the case of Rikhi Ram (supra) it has been held by the Supreme Court that whenever a vehicle which is covered by the insurance policy is transferred to transferee, the liability of insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.

5 In view of the above legal position the impugned order under section 140 of the Motor Vehicles Act deserves to be quashed and set aside and the matter requires to be remanded to the Claims Tribunal for reconsideration of the application under section 140 of the Act on merits in accordance with law.

6 In the result, the appeal is allowed. The impugned order dated 31/08/2001 under section 140 of the Act below exhibit 4 is quashed and set aside and the matter is remanded to Motor Accident Claims Tribunal, Panch Mahals at Godhra for reconsideration of the same on merits in accordance with law. The Claims Tribunal shall decide the application under section 140 of the Motor Vehicles Act as expeditiously as possible preferably within three months from the date of the receipt of the writ of this order.

Sd/- Sd/-
(N.G.Nandi, J) (D.A.Mehta,J)

m.m.bhatt